

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MARTHA D. COLE

08-CV-0672

VERSUS

JUDGE DONALD E. WALTER

C. DALE CHELETTE, ET AL

MAGISTRATE JUDGE HAYES

MEMORANDUM RULING

Before this Court is a Motion for Summary Judgment [Doc. #22] filed on behalf of Defendants, C. Dale Chelette ("Chelette"), Richard L. Fewell ("Fewell"), Todd Freeman, ("Freeman"), Robert Chris Tolbird ("Tolbird"), John Dupree ("Dupree"), and Matthew Hill ("Hill"), pursuant to Federal Rule of Civil Procedure 56. Plaintiff, Martha D. Cole, opposes this motion. For the reasons assigned below, Defendants' motion is **DENIED IN PART** and **GRANTED IN PART**.

DISCUSSION

On May 16, 2008, Cole brought this action under 42 U.S.C. § 1983 alleging excessive force and violations of the Fourth and Fourteenth Amendments stemming from defendants' use of a Taser on Cole during a traffic stop. Defendants now move for summary judgment.

In their memorandum in support of the motion for summary judgment, defendants contend that Cole has made no showing that Tolbird, Dupree, or Hill were involved in the action complained of or in a position to intervene. [Doc. #22-4 at 6]. Cole concedes this argument. [Doc. #29 at 6]. Therefore, there are no genuine issues of material fact suggesting liability on the part of Tolbird, Dupree, and Hill. Consequently, the motion for summary judgment is granted with regard to these defendants. Cole's claims against Robert Chris Tolbird, John Dupree, and Matthew Hill are

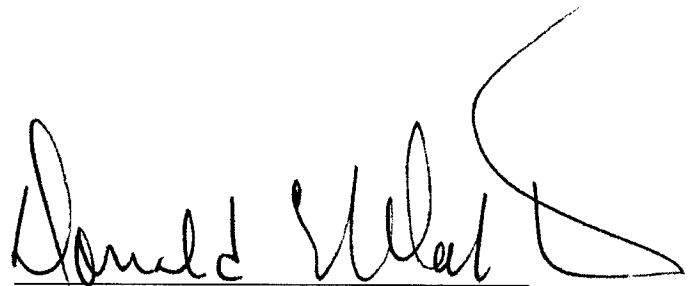
dismissed with prejudice.

In her complaint, Cole's allegations against Fewell aver that he tolerated and/or ratified the misconduct of the officers under his control. Cole, however, has offered no evidence to counter defendants' summary judgment proof that Fewell did not tolerate or promote officer misconduct and that he required officers to be properly trained in the use of a Taser. As such, there are no material issues of genuine fact suggesting liability on the part of Fewell. The motion for summary judgment is granted with regard to him, and all claims against Richard L. Fewell are dismissed with prejudice.

Regarding Chelette and Freeman, this Court finds that genuine issues of material fact exist concerning whether Cole resisted officers or acted in a threatening manner that would justify use of a Taser. Therefore, the motion for summary is denied with regard to C. Dale Chelette and Todd Freeman.

CONCLUSION

For the aforementioned reasons, the defendant's motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**. Cole's claims against Fewell, Tolbird, Dupree, and Hill are **DISMISSED WITH PREJUDICE**.

A handwritten signature in black ink, appearing to read "Donald E. Walter", with a large, sweeping flourish extending to the right.

DONALD E. WALTER
UNITED STATES DISTRICT JUDGE